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EXTRAORDINARY

PART II—Section 3

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No. 10] NEW DELHI, MONDAY, JANUARY 11, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 31st December 1953

S.R.O. 163.—Whereas the elections of Shri Jamuna Prasad Mukhraiya and Shri Chaturbhuj Jatav, as members of the Legislative Assembly of the State of Madhya Bharat, from the Bhilsa constituency of that Assembly, have been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Lachhi Ram, S/o Shri Ratanmal Jain, Bhilsa, Madhya Bharat;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, GWALIOR MADHYA BHARAT

ELECTION PETITION No. 263 OF 1952.

Election Petition under section 81 of the Representation of the People Act, No. XLIII of 1951

CORAM:—

Shri V. K. Dongre, M.A., LL.B.,—*Chairman.*Shri Suraj Bhan, B.A., LL.B.,—*Member.*Shri Bhagwan Swaroop, Advocate,—*Member.*Lachhi Ram, s/o Ratanmal Jain of Bhilsa, Madhya Bharat—*Petitioner.**Versus*

1. Jamunaprasad Mukharaiya, Neemtal Road, Bhilsa.

2. Chaturbhuj Jatav, Kampoo Road, Lashkar, Gwalior.

3. Keshav Shastri, Andar Qila, Bhilsa.

4. Vinayak Narayan Sheode, Andar Qila, Bhilsa.

5. Hira Khusla Chamar, Village Manora, Tehsil and District Bhilsa.

6. Ram Sehail, Ram Kuti, Bhilsa.

7. Sunnu Lal, Subar Road, Bhilsa—*Respondents.*

COUNSELS FOR THE PETITIONER:—

Messrs. Shiv Dayal, Jagannath Prasad Shrivastav, Krishnanand Narayanrao Parnerkar, Fateh Narayan, Advocates.

COUNSELS FOR THE RESPONDENT No. 1:—

Messrs. P. L. Inamdar, A. B. Mishra, Premnarayan, Bhajanlal Niranjan Varma, Advocates.

COUNSEL FOR THE RESPONDENT No. 2:—

Shri A. B. Mishra, Advocate.

COUNSEL FOR THE RESPONDENT NOS. 3 AND 4:—

Shri Gopikrishna Katore, Advocate.

COUNSELS FOR THE RESPONDENT No. 7:—

Messrs. Krishna Bahadur and Vidyasagar.

JUDGMENT

* This is an election petition under section 81 of the Representation of the People Act, filed by Shri Lachhiram, an elector in the Bhilsa Constituency relating to the Legislative Assembly of the State of Madhya Bharat, challenging the election of Shri Jamuna Prasad Mukharaiya, respondent No. 1 and Shri Chaturbhuj Jatav, respondent No. 2 and praying that Shri Ram Sahai, respondent No. 6 and Shri Sunnulal, respondent No. 7 be declared to have been duly elected. Respondent Nos. 1 and 2 the successful candidates contested the election on behalf of the Hindu Maha Sabha, Keshav Shastri respondent No. 3 was set up by Ram Rajya Parishad; respondent Nos. 4 and 5 Shri V. N. Sheode and Shri Hira Khushla Chamar were nominated by the Communist party of India and Shri Ram Sahai and Shri Sunnulal respondent Nos. 6 and 7 were Congress candidates. The facts leading to the filing of the election petition, as stated in it, briefly stated, are as follows:

(1) Respondent Nos. 1 and 2 in their election campaign made promises that they would make 'Bharat a Truly Democratic Hindu State', oppose Hindu Code Bill, prevent Cow slaughter and protect religious traditions.

(2) In order to assure the electorate that Shri Keshav Shastri respondent No. 3 and Shri Krishna Gopal a candidate of Ram Rajya Parishad in the Basoda constituency, were not genuine candidates, but were contesting the election for the benefit of the Congress, respondent Nos. 1 and 2, their agents and other persons with their connivance, published leaflets containing false statements of facts relating to the personal character and conduct of respondent Nos. 3, 6 and 7 and calculated to prejudice their election. Those leaflets are:—

- (i) Krishna Gopal Ka Bhandaphod—(Marked A).
- (ii) Dr. Jamuna Prasad Mukharaiya—(Marked B)
- (iii) Hindu Sabha Nateran Ka Virat Ayojan—(Marked C)
- (iv) Ram Rajya Parishad Banam Congress—(Marked D).
- (v) Congress Dalalose Savdhan—(Marked E).
- (vi) Congress Se Savdhan—(Marked M).

Besides this, Seth Ghasiram, President, Hindu Maha Sabha Bhilsa, agent of respondent Nos. 1 and 2, just a few days before the Polling of Pipalधार Station, stated before the public that the Congress had given five thousand rupees to Ram Rajya Parishad candidate, in order, to divide Hindu Sabha votes.

(3) Respondent Nos. 1 and 2, their agents and other persons with their connivance published two leaflets and a booklet containing false statements, calculated to prejudice the election of respondent Nos. 6 and 7. They are:—

- (i) Janab Ke Hath Kande Aur Karname—(Marked F).
- (ii) Harijan Bhaiyo Savdhan—(Marked H).
- (iii) Khadi Ke Chole Mc Madhya Bharat Ke Ek Pramukh Congressi Neta Ke Kale Karname—(Marked G).

(4) Respondent Nos. 1 and 2, their agents and other persons with their connivance obtained and secured the assistance of a number of Government servants for the furtherance of their election prospects through the publication of four leaflets and one circular letter (Marked I, J, C, K, R) signed over by Patels.

(5) Respondent Nos. 1 and 2, their agents and other persons with their connivance, issued five hand bills, marked I, J, C, K and L and a circular letter marked R and leaflets 'Harijan Bhaiyo Savdhan' (Marked H), 'Yadi Ap Chahte Hain' (Marked O), over the signature of persons, who did not subscribe their signatures. A leaflet 'Hindu Rashttra Ki Sthapna Ke Hetu' (Marked S) was published in the name of Sardar Sambhaji Rao Angre, who is dead. Through this fraudulent means, undue influence has been brought on the electors.

(6) Respondent Nos. 1 and 2, and other persons with their connivance, published and distributed a hand bill (Marked T) to exert undue influence on the electorate.

(7) Respondent Nos. 1 and 2, their agents and other persons with their connivance, made a systematic appeal to the electors on grounds of Hindu religion, caste and community, as well as on the ground of protection to cow, as a symbol

of Hindu religion. This appeal has been made through the leaflets and posters which are:—

- (i) Congress Se Savdhan—(Marked M).
 - (ii) Janab Ke Hath Kande Aur Karnam—(Marked F).
 - (iii) Congress Dalalo Se Savdhan—(Marked E and E1).
 - (iv) Hindu Sabha Nateran Ka Virat Ayojan—(Marked C).
 - (v) Harijan Bhaiyo Savdhan—(Marked H).
 - (vi) Harijan Ummedwar Chaturbhuj—(Marked N).
 - (vii) Yadi Ap Chahte Hai—(Marked O).
 - (viii) Hindu Maha Sabha Ka Virat Ayojan Gram Wardha—(Marked K).
 - (ix) Hindu Rashtra Ki Sthapna Ke Hetu—(Marked S).
 - (x) Doctor Mukharaiya Ki Ghud Sawar Pcti Me Vote Daliye—(Marked B).
 - (xi) Hindu Maha Sabha Ko Vote Deejiye—(Marked Q).
- (8) Respondent Nos. 1 and 2 and their agents and other persons with their connivance issued two posters marked B and P, a booklet G and a hand bill T which did not bear the names and addresses of the printer and publisher thereof.
- (9) The Returns of elections expenses submitted by respondent Nos. 1 and 2 are false in material particular.
- (10) The Returning Officer, added to the votes of respondent No. 1, the votes of Ram Rajya Parishad of Norja Polling Station, which had already been counted for respondent No. 3.
- (11) The provisions of the Representation of the People Act and Rules made thereunder, were not complied with.

The petition was published in the Madhya Bharat Government Gazette, dated the 21st August, 1952 under section 90 of the Representation of the People Act. Respondent No. 1 Dr. Jamuna Prasad Mukharaiya gave notice to the Tribunal of his intention to lead evidence to prove that the election of Shri Ram Sahai and Sunnulal would have been void, if they had been returned candidates, by presenting a petition, before a member of the Tribunal at Gwalior on 4th September, 1952, which was forwarded to the Chairman by registered post to Dhar, and the Chairman received it on 11th September, 1952. The petitioner made an objection that the recriminatory notice has not been presented to the proper authority and within the time prescribed under the Representation of the People Act.

Respondent Nos. 1, 2, 6 and 7 filed written statements. Respondent No. 5 did not appear and Mr. Katare Advocate for respondents Nos. 3 and 4 gave an application that his clients did not want to submit any written statements.

Respondent Nos. 6 and 7 have admitted all facts stated by the petitioner.

Respondent Nos. 1 and 2 have made common preliminary objections that the petitioner has failed to comply with the provisions of section 83 of the Representation of the People Act; the lists accompanying the petition and the particulars are not verified as required by law; the petitioner has not joined as respondents Shri Ghasiram s/o Agyaram and Shrimati Panchobai alias Kosalyadevi wife of Sunnulal, who were duly nominated candidates; and the provisions of section 123, sub-clause (2), proviso (a)(i); and section 124 sub-clause 5 of the Representation of the People Act of 1951 are repugnant to the fundamental rights granted under the Constitution of India and as such are *ultra vires*. These respondents have admitted the introductory matters given in para. Nos. 1 to 4 of the petition and have denied the matters contained in para. Nos. 5, 7, 8, 9, 10, 11 and 12 of the petition.

Both these respondents have admitted that pamphlet marked B (Ex. 24) was published by the party to which these respondents belong. Respondent No. 1 has admitted leaflets marked K (Ex. 47), R (Ex. 39), S (Ex. 34) and Q (Ex. 33); and respondent No. 2 has admitted leaflets marked N (Ex. 31), O (Ex. 32) and P (Ex. 36). Both respondents have denied most of the allegations made in the petition by saying that they are not responsible for publishing the leaflets and pamphlets not admitted by them; and regarding the admitted pamphlets they have said that they do not infringe the election law.

The following issues were framed:

- (1) What is the effect of the list of particulars accompanying the petition being not verified on oath as required by law?

(2) Has the petitioner failed to join Shri Ghasiram Maheshwari and Mrs. Panchobai alias Kaushalya Devi w/o Sunnulal, and are they necessary parties *vide* section 82 of the Representation of the People Act, 1951 and is the petition liable to be set aside with costs on this ground?

(3) Are the provisions contained in section 123 clause (2) proviso (a-i), and section 124 sub-clause (5) of the Representation of People Act, 1951 void and *ultra vires* of the Constitution of India. Is this Election Tribunal competent to deal with this objection?

(4) Whether the leaflets A, B, C, D, E, M, F, G, H and Q mentioned in para. 8(i), (ii), (iii) of the petition were printed, read out, explained and distributed by respondent Nos. 1 and 2 or their agents or with their connivance, believing them to be false or believing them not to be true; and do they refer to respondent Nos. 3, 6 and 7, and if so, what is its effect on the election?

(5) Whether respondent Nos. 1 and 2 or their agents or other persons with their connivance secured the assistance of Government servants for the purpose of the furtherance of election, as mentioned in para 8(4) of the petition. How does this fact affect the result of election?

(6) Whether respondent Nos. 1 and 2 or their agents or other persons with their connivance issued hand bills I, J, C, K, L, R, O, S (out of which K, R, S are admitted by respondent No. 1 and O by respondent No. 2). Does leaflet 'S' bear the name of Sambhaji Rao Angre who is dead? Do the contents of the above leaflets amount to undue influence?

(7) Whether respondent Nos. 1 and 2 or their agents and other persons with their connivance brought undue influence on the electors by publishing and distributing handbill 'T' and what is its effect?

(8) Are posters and hand bills marked B, P, T, Q (in the petition, which have not got names and addresses of printers and publishers on them) issued by respondent Nos. 1 and 2 or their agents and other persons with their connivance. If so what is the effect on election?

(9) Whether there was a systematic appeal to the Hindu Electors by respondent Nos. 1 and 2 or their agents or other persons with their connivance on the grounds of Hindu religion, caste and community as well as on the protection to be given to Cows as a symbol of Hindu religion, and what is its effect?

(10) Are the allegations given in para. 8 of the petition indefinite and without particulars and if so, what is its effect?

(11) Is para. No. 9 of the petition short of particulars, about the manner and effect of the systematic appeal, on the election; and if so, what is its effect?

(12) Is the return of election expenses filed false as detailed in para. No. 9(3) of the petition; and what is its effect?

(13) Is the recriminatory notice under section 97 of the Representation of the People Act, 1951 filed within time and is it presented to the proper authority, if not what is its effect?

(14) Did the Returning Officer add to the votes of respondent No. 1 the votes of Ram Rajya Parishad of Norja Polling Station, which had already been counted for respondent No. 3; and if so, how far does it effect the election?

(15) Whether the provisions of Representation of the People Act, 1951 and rules were not complied with as described in the list No. 3 of non-compliances and what is its effect?

(16) Is the petitioner entitled to get the declaration that the election of respondent Nos. 1 and 2 is void and that respondent Nos. 6 and 7 are duly elected?

Issue Nos. 1, 10 and 11 have been decided by our order, dated the 19th December, 1952 (Annexure A) and issue No. 13 by our order, dated the 24th December, 1952 (Annexure B).

Issue No. 2.—There is no dispute regarding the fact that Shri Ghasiram and Mrs. Panchobai were duly nominated candidates; and they withdrew after their nominations were accepted. The statements of Ghasiram P.W. 4 and Sunnulal P.W. 41 are clear on the point. The objection of respondent Nos. 1 and 2, is that as these duly nominated candidates have not been joined as respondents, under In Election Petition No. 221 of 1952, published in the *Gazette of India*, dated 5th May, 1953 on page 1153, we have held that a candidate who had withdrawn, is not a necessary party; and as such his not being joined as a respondent is not fatal to the petition. In view of this finding of ours, which has been followed by us, in other election petitions, the learned counsels for the respondents, did not

seriously press this issue. We do not find any grounds to take a different view in this case, hence we decide this issue against the respondents.

Issue No. 3.—Mr. Mishra's objection in connection with this Issue is two fold. (i) That article 19(a) of the Constitution of India guarantees freedom of speech and expression; and section 123(2) (a) (i) and section 124(5) of the Representation of the People Act are in restraint of this freedom. (ii) In view of article 329(b) of the Constitution of India, the appropriate Legislature for making the law for setting aside election is the State Legislature and not the Parliament.

(i) The words of the relevant sections of the Representation of the People Act are:

Section 123(2) (a) (i)—Threatens any candidate, or any elector or any person in whom a candidate, or an elector is interested with injury of any kind including social ostracism and excommunication or expulsion from any caste or community.

Section 124(5)—The systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious and national symbols, such as, the national flag and the national emblem, for the furtherance of the prospects of a candidate's election.

From the words of the above clauses it is clear that the freedom of speech and expression is restricted only so far as it is used for threatening an injury of social ostracism and excommunication or expulsion from any caste or for making an appeal on grounds of caste, race, community or religion etc.

The amended clause 2 of article 19 of the Constitution of India says that:—Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

In our view, the restrictions on freedom of speech or expression contained in section 123(2) (a) (i) and 124(5) of the Representation of People Act are reasonable restrictions on the right, in the interest of the security of the State, public order and to check incitement to an offence; and as such these provisions of the Representation of the People Act are not *ultra vires* of the Constitution.

In connection with the second objection Mr. Mishra has drawn our attention to Article 327, 328, 329 of the Constitution of India. His line of argument is that under article 327 the Parliament can by law only make provisions with respect to all matters relating to or in connection with elections, but it cannot make provision with respect to setting aside elections, and in view of article 329 the provisions for setting aside an election to the State Legislature should be made by the appropriate Legislature i.e., the State Legislature.

The words used in Article 327 of the Constitution of India, *viz.*, matters relating to or in connection with elections are wide enough to include setting aside of elections; and as provision has been made by the Parliament in this respect in the Representation of the People Act, the State Legislature cannot make law in this respect under Article 328. In our view, the objections made and arguments advanced by Mr. Mishra in connection with this issue have no force, so we decide his issue against respondent Nos. 1 and 2.

Issue No. 4.—There are two kinds of allegations made in the petition out of which this issue arises. The first set of allegations, relates to false statements that the Congress has set up and is helping the Ram Rajya Parishad, in order to divide the votes of Hindu Maha Sabha. The second set is regarding the false statements affecting the personal character and conduct of respondent Nos. 6 and 8. The leaflets A (Ex. 23), B (Ex. 24), C (Ex. 25), D (Ex. 26), E (Ex. 27), E1 (Ex. 28), M (Ex. 30) relate to the first set; and the leaflets F (Ex. 29), H (Ex. 38) and the booklet G (Ex. 21) relate to the second.

First of all we will consider which of these leaflets are admitted or proved to have been printed published or distributed by respondents or their agents or with their connivance, and then go into their contents.

Respondent No. 1 has admitted the publication of leaflet B (Ex. 24) and poster (Ex. 33) in para. 9(i) of his written statement; and has admitted in his statement on oath that the leaflet Ex. 9/1 (which is D, Ex. 26) was distributed in Bhilsa constituency and it was published by Madanlal Sharma, who was his polling agent. The printing charges Rs. 18/3/- are also entered in the return of election expenses of respondent No. 1, hence respondent No. 1's explanation that this leaflet was published by Madanlal Sharma on behalf of Hindu Rashtra Sena, has no meaning.

The manuscript of leaflet M (Ex. 30) is Ex. 15, and Ex. 15/1 is a printed copy of it. Respondent No. 1 has admitted in his statement on oath that Ex. 15 was published by the Pradhan Mantri of the Hindu Maha Sabha of Madhya Bharat and it was distributed in Bhilsa also.

The printing charges of leaflets A (Ex. 23), F (Ex. 29), E (Ex. 27) and E1 (Ex. 28) are entered in the return of election expenses of Shri Niranjan Varma (R.W. 31) who was a candidate for Basoda Constituency. Regarding these four leaflets, the question now is whether they have been distributed in Bhilsa Constituency by respondent Nos. 1 and 2 or by their agents or with their connivance.

Regarding the distribution of Ex. 23, we have on record the statements of Krishna Gopal P.W. 2, Jogendrasingh P.W. 9, Ajaysingh P.W. 14, Lachhram P.W. 34, Ram Sahai P.W. 42. Most of these witnesses have not actually seen the distribution of these leaflets, but they have procured the said leaflets from others. We do not think this evidence sufficient to prove the distribution of this leaflet in Bhilsa Constituency. Besides this, the contents of this leaflet do not amount to false statement, as they relate to a candidate of a different constituency.

Leaflet F.—Ex. 13 is the manuscript of leaflet F (Ex. 29), and Ex. 15/1 is a printed copy of it. There are about a dozen witnesses on behalf of the petitioner who have deposed about this leaflet. To appreciate their evidence, we think it necessary to state briefly what these witnesses have said. Ratan C. Shah P.W. 1 is the Manager of the Nav Bharat Printing Press Bhilsa. He has deposed that Ex. 13/1 was printed in his press. The manuscript Ex. 13 was brought by Shri Niranjan Varma and Dr. Mukharaiya (Respondent No. 1) was with him. Shri Niranjan Varma made the corrections marked A, B, C in his presence. After that he took away the manuscript, which was then of three pages, with the fourth page blank. Next morning, Bhagchandra Sharma brought the manuscript with him, with content written on the fourth page and said that it was to be printed under his signature. Then Bhagchandra put his signature on the manuscript, 1500 copies were printed. There is nothing of importance in the cross examination of this witness, on the basis of which he could be disbelieved. It is said that he is the son-in-law of a person who is inclined towards the Congress. We do not think this a sufficient ground to disbelieve his statement. Kailash Narayan P.W. 6 is the person who has done election propaganda on behalf of respondent Nos. 1 and 2. He has said that he got leaflets like Ex. 13/1 (Ex. 29). He read the contents to the people. Dr. Mukharaiya had asked him to do propaganda in that way. Jogendrasingh P.W. 9 has said that Ex. 29 was given to him by Bhagchandra Sharma. Gulabsingh P.W. 10 has said that he was working for Hindu Sabha during the election and a leaflet named Janab Ke Hath Kande (Ex. 29) was distributed in a meeting held in Nateran. Bhaiyalal was distributing this leaflet. Parasram P.W. 13 has said that Bhagchandra Sharma gave him leaflet (Ex. 29) in Gajar and Ajaysingh P.W. 14 has also said that Bhagchandra Sharma distributed this leaflet in Gajar.

Thansingh P.W. 16 has produced leaflet Ex. 29 along with 6 others of a different class and has said that they were distributed on behalf of Hindu Maha Sabha during 10—15 days before the polling. Devisingh P.W. 22 is the person who has worked for the Congress, and he has said that he had been to village Barra for canvassing, where he met Kanhaiyalal Sharma who was distributing leaflets Ex. 29 was one of them. Ghasiram P.W. 26 has said that Ex. 29 was distributed in the meeting held at Nateran.

Sundarlal P.W. 38 was the Sub-Inspector of Police of Nateran. He has said that he was present in the meeting of Hindu Maha Sabha held at Nateran on 15th December 1951. Dr. Mukharaiya, Niranjan Varma and Ramsanehi Baba addressed the meeting. In that meeting leaflet Janab Ke Hath Kande (Ex. 29) and 2-3 other leaflets were distributed.

As against this evidence of the petitioner respondent No. 1 Dr. Jamuna Prasad Mukharaiya has said that he did not get this leaflet printed, nor was it distributed by his agents or workers or with his connivance. Shri Niranjan Varma R.W. 31 has said that Bhagchandra Sharma was working in Basoda Constituency upto 1st January, and as Shri Mukharaiya was short of polling agents Bhagchandra went to Bhilsa Constituency. Bhagchandra Sharma R.W. 22 has said that he did not distribute leaflets Ex. 29, anywhere excepting Basoda. Komal Prasad R.W. 26 is the Mantri of Nagar Hindu Sabha Bhilsa. He has also said that Ex. 29 was not distributed in Bhilsa Constituency. He has further said that Ex. 13 is in Bhagchandra's hand and the portions marked E, G, were written by him (the witness) and that he had crossed the marked portion. From the statement of this witness it is quite clear that he had added to and made alterations in the original draft of Ex. 29 i.e., Ex. 13. The witness has said that he had struck off his

signature on Ex. 13, as that leaflet related to Basoda Constituency. If this leaflet was really meant only for Basoda Constituency, we fail to understand, why it should include matter relating to a person (Janab No. 2) who apparently appears to be a candidate for Bhilsa Constituency. Besides this, Komal Prasad was Mantri of Nagar-Hindu Sabha Bhilsa, if this leaflet had nothing to do with Bhilsa why should he have made additions and alterations in it, so far as contents regarding Janab No. 2 are concerned. This leaflet is signed by Bhagchandra Sharma, who is a Sadasya of the Karyakarini Nagar Hindu Sabha Bhilsa. Taking the statement of Komal Prasad as a whole, and his conduct in connection with Ex. 13, it is clear that this leaflet Ex. 13 (Ex. 29) was meant to serve both the Constituencies i.e., Bhilsa and Basoda.

Ex. 11 appears to be a sort of a receipt of bills regarding printing charges. Ratan C. Shah P.W. 1 has said that Shri Niranjan Varma had signed it. When this bill was given to him, Shri Varma said that the amount of the pamphlet printed by Bhagchandra Sharma should have gone in Mukharaiya's bill. On this the witness said that as the manuscript was written by him, and as the matter related to the Constituencies of Bhilsa and Basoda, the amount was entered in his bill. After this for, clarification Mr. Varma wrote the words 'in interest for us'. Mr. Niranjan Varma, R.W. 31 has not denied these facts in his statement, nor has he said that what is stated as 'Bhagchandra Sharma Ki Sahi Ka Paripatra' is something different from Ex. 29, which bears the name of Bhagchandra. The writing of the phrase 'in interest for us' by Shri Niranjan Varma, in connection with 'Bhagchandra Sharma Ki Sahi Ka Paripatrak' clearly shows that these leaflets were meant for himself and some body else.

Though it is not difficult to criticise the evidence of some of the petitioner's witnesses, particularly Kailash Narayan P.W. 6, Thansingh P.W. 16, considering the whole of the oral evidence, together with Ex. 11, and reference of Janab No. 2 in the leaflet Ex. 29, we are definitely of opinion that it was printed for both Constituencies and that it was distributed by the agents and workers of respondent No. 1, with his connivance, and sometimes in his presence also, in Bhilsa Constituency.

Leaflets E and E1 (Ex. 27 and Ex. 28).—Shri Ratan C. Shah, P.W. 1 has said that Ex. 14 which is the manuscript, was given to him by Dr. Jamunaprasad Mukharaiya. The witness told him that as the appeal was made to vote for himself, it was not appropriate to have his signature on it. So Jamuna Prasad struck off his signatures and a man who had come with him signed it as Chotelal Sharma. In all 1500 copies were printed.

Ram Karan P.W. 12 has said that Mukharaiyaji gave him a leaflet having the title 'Congressi Dalalon Se Savdhan'. Keshav Shastri P.W. 15 has only seen Exs. 27 and 28, but he cannot say who was responsible for their distribution and where they were distributed. Thansingh P.W. 16 cannot say who gave him Ex. 28. Kanhaiyalal P.W. 23 has said that he was working for Mukharaiya and Chaturbhuj in the election and he distributed half a dozen leaflets and Ex. 27 was one of them. Jugal Kishore P.W. 25 has himself produced 9 leaflets, booklet etc., and has said that these were distributed by Hindu Maha Sabha people in Shamshabad. The witness has admitted that he is the son of one Kadorilal who had worked on behalf of the Congress for Ram Sahai, respondent No. 6. Bankelal P.W. 30 who has worked for the Congress in the elections has produced four leaflets, Ex. 27 being one of them, and has said that it was given to him by Kanhaiyalal Jat in Gulab Ganj Hat. We have carefully gone through the statements of the above witnesses, and we are not impressed by their evidence. Some of them have brought good many leaflets with them and some are unable to say who gave them these leaflets. We do not think the petitioner's evidence regarding the distribution of leaflets E and E/1 in Bhilsa Constituency sufficient and reliable; hence it is not proved that these leaflets were distributed in Bhilsa Constituency by respondent Nos. 1 and 2 or their agents.

Leaflet C (Ex. 25).—Ratan C. Shah, P.W. 1, has said that Ex. 16 is the manuscript of this leaflet and Ex. 16/1 is a printed copy. Ex. 16 was given to him for printing by Gulabchand of Nateran. Gulabchand, P.W. 10, has admitted signing the order form Ex. 20 and has said that Ex. 16 was written by Puransingh. The witness had been with Puransingh to the Press, seven or eight days after this, Prem Narayan took leaflets like Ex. 16 for distribution. The leaflets were distributed in Nateran. The witness is very inconsistent in his cross examination regarding the fact of distribution of leaflets. Keshav Shastri P.W. 15 has only said that Ex. 25 was seen by him and it was issued by Hindu Sabha. Kanhaiyalal P.W. 23 has said that he was working for respondent Nos. 1 and 2 during the election he distributed more than half a dozen leaflets and Ex. 25 was one of them. Ghasiram P.W. 26 has produced a copy of Ex. 25 and has said that it was distributed in Nateran. Hamirsingh P.W. 27 has said that Bhagchandra, worker of

Hindu Maha Sabha gave him Ex. 25. On going through this evidence we do not think that Jamunaprasad Mukharaiya had any hand in the printing of this leaflet or that these leaflets were distributed by him or his agents or with his connivance.

Regarding Booklet G (Ex. 21) entitled 'Khadi Ke Chole Main' Madhya Bharat Ke Ek Pramukh Congressi Neta Ke Kale Karname' the allegations made by the petitioner are that it was published in Bhilsa, one day before the polling in Bhilsa took place i.e., on the 8th of January, 1952, by respondent Nos. 1 and 2, their agents or with their connivance; and this booklet contained various false statements relating to the personal character and conduct of respondent No. 6. From the cover of this booklet, it appears that the booklet has been published by one Shyamlal Jain and only the cover was printed in Malti Press, Lashkar. This book contains certain allegations made through his representation to the All India Congress Committee, by one Gautam Sharma of Lashkar, Gwallior. The question before us is whether this booklet was distributed by respondent Nos. 1 and 2. We would like to mention briefly the evidence in this connection. Maya Shankar P.W. 36, Manager, Malti Press Lashkar has said that the printing of the cover and the binding of booklet Ex. 21 was done in his Press. Shyamlal Jain the publisher got this work done. This Shyamlal Jain was seen working for the Hindu Maha Sabha candidates of Lashkar. These booklets were despatched on 5th January 1952. The booklets and the bill were sent to Kunwarsingh. There is nothing in writing with the witness, which could show who really placed the order and where the books were to be despatched.

Kailash Narayan P.W. 6 has said that Dr. Jamuna Prasad Mukharaiya gave him booklet Ex. 21 for propaganda. He read the book and did propaganda. This witness has now become a Patel, he is involved in a criminal case under the Arms Act, as such he is likely to be influenced by anybody who could render him help. The witness has brought copies of Ex. 21 and Ex. 29 with him of his own accord. Considering the whole statement and the unnatural conduct of the witness, we do not think him reliable. Parasram P.W. 13 has said nothing about Ex. 21, in his examination in chief, but in cross examination by respondent No. 6 the witness has said that Dr. Jamunaprasad Mukharaiya gave him booklet Ex. 21 in Bhilsa Bajaria. This witness does not impress us.

Thansingh P.W. 16 produced a copy of Ex. 21 and six other leaflets and has said that these were distributed during the 10-15 days of the election. He has said that Dr. Mukharaiya gave him this booklet. He is not able to tell the exact date. The witness has become a contractor of Bhilsa Municipality since a year, and the petitioner is a Member and his pleader Mr. Krishna Nand is the President of the Municipality. Kanhaiyalal P.W. 23, who has done the work of distributing leaflets for respondent Nos. 1 and 2, has said that he distributed Ex. 21 with other leaflets. His version is that about 20 booklets were kept in the room along with other leaflet and he took away 8 or 10. In cross examination he has said that Mukharaiya was not there, when he took away the booklets. This clearly means that this witness did not distribute this booklet with the knowledge or connivance of respondent Nos. 1 and 2. The witness has also said that such booklets were given by Atal Beharilal for propaganda a month or a month and a half before the election and Atal Beharilal was working for Ram Rajya Parishad. Jugal Kishore P.W. 25 is the son of one Kadorilal, who has worked on behalf of the Congress for Ram Sahai respondent No. 6. He has produced Ex. 21 and other 8 leaflets and has said that this booklet was given by Bhagchandra on the day of polling in Bhilsa. This witness clearly appears to be under the influence of Shri Narayan, President, Congress Committee, Bhilsa.

Hamirsingh P.W. 27 has produced booklet Ex. 21 along with three other leaflets. He has said that Dr. Mukharaiya gave him this booklet two days before the polling. The witness has not read this booklet nor did he give it to anybody. He is not even able to say what is written on the first page. Sunderlal P.W. 38 Sub-Inspector of Police Nateran, has said that he took booklet Ex. 21 from Dr. Mukharaiya 2-3 days before 15th January 1952. The witness does not know who distributed these booklets in the public. Whatever this witness has said about Ex. 21 does not throw much light on the main point as to who distributed these booklets.

Malharrao Tapaswi P.W. 40 has said that he obtained a copy of Ex. 21 from Bhagchandra Sharma who belongs to Hindu Sabha. Bhagchandra told him that he had only one copy. Though the witness has said that these books were distributed in Bhilsa, he has not definitely said that he saw anybody distributing them. Jogendra Singh P.W. 9 has said that he got Ex. 21 two or three days before Polling took place in Bhilsa. He has not said who gave him or how he got it. Keshav Shastri P.W. 15 has said that he had seen Ex. 21 but it was not distributed

in his presence. Badri Prasad P.W. 7 and Sunmulal P.W. 41 have only said that Ex. 21 was read by Dr. Jamuna Prasad Mukharaiya at Mandsaur in June 1952, i.e., about six months after the election in dispute. This evidence is not relevant for the present inquiry as this fact cannot lead us to an inference that Shri Mukharaiya must have made use of this booklet, in his own election in January 1952.

As against the petitioner's evidence, there are some witnesses of respondent No. 1 who throw some light on the fact of distribution of Ex. 21.

Shankar Rao Bhonsale R.W. 6 has said that Shri Damodar Prasad Upamanyu, a worker of Ram Rajya Parishad had brought 500 copies of this booklet (Ex. 21) from Lashkar and he gave them to Atal Beharilal. The witness has said that he himself distributed some copies.

Damodar Prasad Upamanyu R.W. 8 who is Mantri of Ram Rajya Parishad Madhya Bharat, Gwalior has said that he went to Bhilsa on 7th January 1952 at night by Madras Mail and took with him about 500 copies of Ex. 21 along with other literature of Ram Rajya Parishad and gave the whole material to Atal Beharilal. Madanlal Sharma R.W. 11 has said that Atal Beharilal, Balram Shastri and Keshav Shastri distributed Ex. 21 in Bhilsa, and all these persons belong to Ram Rajya Parishad. Damodar Das, R.W. 12, Mathura Prasad R.W. 13 have said that Ex. 21 was distributed by Atal Beharilal on behalf of Ram Rajya Parishad. Jamuna Prasad Mukharaiya respondent No. 1 has said in his statement that Ex. 21 was not distributed nor its contents were read by him or his agents or workers.

It may be said why Atal Beharilal who is said to have distributed the booklets Ex. 21, was not produced by respondent No. 1. The reason probably is that Atal Beharilal, though belonging to Ram Rajya Parishad appears to be a relation of respondent No. 6 hence it was not safe for respondent No. 1 to produce him as his witness.

On a careful consideration of the whole evidence regarding Ex. 21, we are of view, that there is no doubt, that some copies of Ex. 21 have been distributed in Bhilsa constituency before the polling, but there is no sufficient and reliable evidence regarding the fact that the booklet was distributed or read out by respondent No. 1 or 2 or his agents or workers or with their connivance. This booklet contains an old affair, and any of the contesting parties could have made use of it. It was possible for witnesses to obtain copies from those who had them.

In the absence of sufficient and reliable evidence regarding the fact of distribution or reading of this book in the public by Respondent No. 1 or No. 2 or their agents, the responsibility of this book cannot be put on the shoulders of respondent No. 1 or 2, simply because some copies of this booklet were available in Bhilsa. In our opinion, the fact of publication or distribution of Ex. 21 by respondent Nos. 1 and 2 or their agents or with their connivance is not proved.

Leaflet H (Ex. 38).—Ratan C. Shah P.W. 1 Manager Nav Bharat Printing Press Bhilsa, has said that Ex. 4 is Dr. Jamunaprasad Mukharaiya's bill and a copy was given to him. Dr. Mukharaiya has signed it, writing that he has received the bills mentioned in it. This bill contains the amount of Rs. 14-11-6 on printing charges of Harijan Bhayo Savdhan. According to this witness the manuscript Ex. 5 was brought by one Shrivastav who was in the service of Hindu Sabha Bhilsa. From the statements of Kaluram P.W. 19, Devisingh P.W. 23 and Malharao Tapasvi P.W. 40, it appears that leaflets Ex. 38 was distributed by Bhagchandra and Kanhaiyalal who were polling agents of respondent No. 1. Respondent No. 7 has said that he himself got Ex. 38 in Madhi village, though he cannot say who gave him. Respondent No. 1 Jaunaprasad Mukharaiya has not denied the signing of Ex. 4 in his statement on oath, though he has said that he did not get it printed. He has justified the contents of this leaflet and also said that when this leaflet came out, it was not decided that Shri Chaturbhuj would stand as a candidate. Considering the whole evidence, we are of view that Ex. 38 was printed with the knowledge of respondent No. 1 and it was distributed by his agents.

Out of the leaflets relating to issue No. 4 leaflets B, D, M, F, H and Q are found to be either admitted or proved. We now consider the contents of these leaflets. As the petitioner has not given any particulars of false statements in poster Q, the contents of this poster need not be considered in this connection.

In the leaflet B, the false statement complained of is that Keshav Shastri had at first promised not to stand for election but then he was standing as a candidate to get the Congress victorious. Keshav Shastri (P.W. 15) has said that this was false. Madanlal Sharma R.W. 11 and Dr. Mukharaiya R.W. 27 have said that on enquiry Keshav Shastri said that he was not standing as a candidate. As both these persons are interested witnesses, it is not safe to rely on their statements. In our view, the statement amounts to saying that Keshav Shastri was a liar and

an unreliable person standing as a candidate of Ram Rajya Parishad to help the Congress. This is a statement in relation to the personal character and conduct of Keshav Shastri, who was a candidate; and was reasonably calculated to prejudice the prospects of his election, as the voters who really wanted to vote for Ram Rajya Parishad would not then vote for him, thinking that he was there to help the Congress.

The first point in leaflet 'D' is vague and relates to the activities of a party and not of any person. The second portion is that 'Keshav Shastri when asked to stand said no' but at the last moment stood for election. The implication of this is that Keshav Shastri was a liar. This statement, in our view, is a false statement relating to the character of a candidate.

The statements mentioned in leaflet M, really relate to the acts of a party and not of any person in particular, hence these statements cannot be called false statements, as defined in section 123(5) of the Representation of the People Act.

Though the petitioner has written good many statements in leaflet 'F' as false statements, in our view, the following statements only need consideration.

'See the Karnamas (acts) of Janab No. 2'.

(a) Janab went to Bija Mandal to lead Id Namaj. He did not go to Dashera, because the minds of Hindu have been turned by Hindu Sabha.

(b) The selection of Patels had been so arranged that even Aurangzeb could be jealous, that he did not distribute so many Jagirs.

(c) If votes are given to him, he would have Hat at Kagpur.

(d) Two men from Guna and Gwalior were sent to Tarafdar Harisingh of Gyaraspur to win him from the Hindu Sabha.

(e) Ramdwara would be raised to the ground if Ramji Ram remained in Hindu Sabha.

(f) Janab was celebrating a Dharam Yagna at Gajar.

(g) The Co-operative Bank, Municipality and Jain's School are his own, the teachers of Jain High School are free to work elsewhere. The salary is paid by the Government and propaganda is done for the Congress.

(h) Driver Bhikam Singh and Servant Jagannath of the Municipality work for the Congress for 24 hours.

From the petitioner's evidence it is quite clear that the person who is called Janab No. 2 in this leaflet, was understood by everybody as Ram Sahai respondent No. 6. Even Madanlal R.W. 11 (who according to respondent No. 1, himself was his helper in his election) has said that Janab No. 2, in Ex. 29 means Ram Sahai. In our view, what is written in Ex. 29 regarding Janab No. 2 relates to respondent No. 6.

We have now to deal with the statements.

In (a) there is a distortion or exaggeration of facts. From the evidence it appears that respondent No. 6 was not going to lead Namaj, but he went on Id day to congratulate the Muslims. He also joined Dashera whenever he was in Bhilsa. The underlying idea appears to be to prejudice Hindu voters.

The main idea in (b) is that it was Janab No. 2 who got the appointments made of Patels. The respondent No. 6 has denied it, and from the petitioner's evidence it appears that respondent No. 6 had nothing to do with the appointment of Patels.

(c) From the record before us there is no ground to think that respondent No. 6 was responsible for having Hat at Kagpur.

(d). Considering the statement of Harisingh it could be said that an attempt was made by Ramdayal Raghu Vanshi of Guna to have him on the side of the Congress, so we do not think that the statement was false or was made believing it to be false.

(e) Respondent No. 6 has denied saying anything like this. Nissanshaw Ram R.W. 30, has said that Ram Sahai said to him that if he did not help the Congress he would be ready to destroy his building, but the witness has clearly said in his cross-examination that Ram Sahai did not take the name of Ram Dwara. This clearly means that the matter regarding Ram Dwara was written for prejudicing the Hindu voters. This statement is false.

(f) On the basis of evidence before us it is clear that respondent No. 6 had nothing to do with Gajar Yaghya.

(g) What is intended by this statement is to impress on the public that the employees of the Co-operative Bank, Municipality and Jain School were drawing their salaries from the Government and were doing the Congress propaganda ignoring their own work. On consideration of the evidence as a whole, we find this statement false and without any justification.

(h) Bhikamsingh has been examined as a witness and he has said that he never did any canvassing for Ram Sahai or the Congress and he or Jagannath did not go with Ram Sahai.

On careful consideration of the matter in Ex. 29 regarding Janab No. 2, along with the evidence on record, we think that the statements (a), (b), (c), (e), (f), (g) referred to above, are all false statements and they were published by respondent No. 1, not believing to be true. The idea behind the publication appears to be to depict respondent No. 6 as a liar, hypocrite, unscrupulous and dishonest person, and one who could stoop to anything, and to lower him in the estimation of the people. These statements relate to the personal character and conduct of respondent No. 6 and are reasonably calculated to prejudice his prospects in the election, hence we are of opinion that the above statements come within the scope of sub-section (5) of section 123 of the Representation of the People Act.

The portions complained of in the leaflet 'H', are that (i) Sunnual calls himself 'Tantuvay Vaishya' hence he is not a Harijan. (ii) These people collected lot of money in Gandhiji's name, for the welfare of the Harijans, without benefit to them, and spent on cars and allowances. (iii) The Harijans are instigated to fight and afterwards no support is given, on the contrary, remuneration is demanded.

Sunnual respondent No. 7 has denied these allegations. On considering the evidence as a whole, we do not see any justification for believing statement (i) to be true. Even assuming that Sunnual called himself Kori or Tantuvay Vaishya, he did not cease to be a Harijan, as respondent No. 2 Chaturbhuj did not cease to be a Chamhar or Harijan, merely by calling himself a Jatav. In the Constitution (Scheduled Castes) Order 1950, the word Koli and Kori appear to be used for one and the same caste. In our view, the statement that Sunnual was not a Harijan is false, and was made to impress upon the Harijan voters that he was really not a Harijan and as such they should vote for some one else who was a Harijan.

Statements (ii) and (iii) relate to the acts of a party and not of any particular person, hence they need not be considered.

As a result, we come to the conclusion that the respondent No. 1 by the publication of leaflets B, D, F and H which contains false statements referred to above, which he did not believe to be true, has committed major corrupt practice, specified under sub-section (5) of section 123 of the Representation of the People Act. To this extent, we decide issue No. 4 in favour of the petitioner, and we will consider the result in connection with issue No. 16.

Issue No. 5.—In para. No. 8(4) of the petition it is said that the respondent Nos. 1 and 2, their agents and other persons with their connivance obtained and secured the assistance of a number of Government servants, through the publication of four leaflets and one circular, signed over by Patels (village headmen) as per annexures I, J, C, K and R. The names of such servants and the particulars of assistance taken from them, and other details are set out in the list of particulars marked No. 1. The list No. 1 attached to the petition, is only a list containing the names of forty persons who are said to be Patels. As stated in para. 8(4) of the petition this list does not contain particulars and it is not verified as required under section 83(2) of the Representation of the People Act. On the objection of respondent Nos. 1 and 2, issue No. 1 was framed, and with respect to this list No. 1, it was decided in favour of the respondents on 19th December, 1952; and we have held in that order that list No. 1 cannot be considered for the purposes of this petition. The petitioner then gave an application for amendment of particulars which has been rejected by our order dated the 29th January, 1953 (Annexure C). According to sub-section (2) of section 83 of the Representation of the People Act, it is mandatory that the petition should be accompanied by a list signed and verified, setting forth full particulars of any corrupt or illegal practice, which the petitioner alleges. Obtaining the assistance of Government servants, for the furtherance of the prospects of any candidate's election, is a major corrupt practice, according to section 123 sub-clause 8 of the Representation of the People Act. As the petitioner has not given full particulars regarding this corrupt practice, in view of sub-clause 2 of section 83 of the Representation of the People Act, this corrupt practice cannot be enquired into, and the petitioner was not allowed to lead evidence in this respect. Mr. Shiv Dayal counsel for the petitioner has drawn our attention to some evidence on record that some persons

working for respondent Nos. 1 and 2 were Patels, and has argued that if any corrupt practice is established by evidence, we should take notice of it, even if not alleged. We find this evidence vague and insufficient. As the petitioner was not entitled to lead evidence on this point, as he had failed to give full particulars of this corrupt practice we do not think it proper to consider the meagre evidence that has somehow crept in. The petitioner not having complied with the provisions of sub-section (2) of section 83 of the Representation of the People Act in respect of the corrupt practice mentioned in para. 8(4) of the petition, we decide issue No. 5 against the petitioner.

Issue No. 6.—The leaflets K (Ex. 47), R (Ex. 39), S (Ex. 34) are admitted by respondent No. 1, and O (Ex. 32) by respondent No. 2. The contents of I (Ex. 46) and J (Ex. 55) are the same as that of R, so we do not think it necessary to see whether these leaflets also have been distributed by respondent Nos. 1 and 2 or by their agents. Regarding I, J, K and R the allegation of the petitioner is that by means of these leaflets, undue influence was brought on the electorate by saying that Hindu Sabha was calling you to stop Cow slaughter and defeat Congress. In pamphlet K the words 'Hindu Dharma Ki Jai' and 'Gau Mata Ki Jai' are used. To constitute undue influence there should always be some compulsion. Though cow is an object of reverence for the Hindus the contents of the leaflets mentioned above do not appear to us to be capable of exerting undue influence on the mind of the voters. The words complained of appear to be used in the leaflets by way of a party manifesto. So far as O and S are concerned, we do not see any element of undue influence in them.

It is argued on behalf of the petitioner that leaflets I, J, K and S are issued under the names of persons, who have not given their consent. Firstly, there is no reliable evidence on this point, and secondly, even if we assume that prior consent of some of the signatories was not taken we are of the view, that this fact is not capable of causing undue influence on the minds of the voters. This issue stands decided against the petitioner.

Issue No. 7.—We have gone through the evidence of both the parties and we do not think that 'T' (Ex. 22) was distributed at Bhulsa, by respondent Nos. 1 and 2 or their agents. In fact, it appears that some students went from Gwahor and distributed these leaflets in connection with the Parliamentary seat hence no liability can be put on respondent Nos. 1 and 2 regarding this leaflet 'T' and we decide this issue against the petitioner.

Issue No. 8.—The publication of 'B' is admitted by respondent Nos. 1 and 2, of 'P' by respondent No. 2 and of 'Q' by respondent No. 1. Leaflet 'T' is not proved to have been published or distributed by respondent Nos. 1 and 2, in connection with issue No. 7. The poster 'Q' filed by the petitioner has got the names of the Press and the publisher printed on it. The respondents have produced copies of leaflet 'B', viz., Ex. A/9, A/15, A/24, A/26, A/30 and a copy of poster 'P' Ex. A/34 and have examined Laxmanrao Jadhav R.W. 9, Pyare Mohan R.W. 10 and Swaroop Kishore R.W. 15 to show that the leaflets and posters which they got printed had the names of the press on them, and it may be possible that these press lines may not be there on the leaflets produced by the petitioner because of over cutting or those copies being proof copies. We have gone through the evidence carefully and we are not impressed by it. The respondents did not produce these leaflets along with their written statements but have preferred to produce them with individual witness, when he came for evidence. We examined the five copies of 'B' produced by respondent and on comparison we found that the position and distance of the press line, from the main contents varied in each case so we conclude that the press line has been printed later on, on all the copies produced by respondents. Our conclusion is that leaflet 'B' and poster 'P' published by respondent Nos. 1 and 2 did not have the name of the printer on them. Thus the respondent Nos. 1 and 2 have committed illegal practice as specified in sub-section (3) of section 125 of the Representation of the People Act. To this extent we decide this issue in favour of the petitioner.

Issue No. 9.—According to the petitioner the systematic appeal to religion, caste etc., was made by respondent Nos. 1 and 2 through the publication of certain leaflets and also orally. We first deal with the appeal through leaflets. In this connection the leaflets referred to by the petitioner are B, C, E, E1, F, H, M, N, O, R and S. As respondent Nos. 1 and 2 are not found responsible for publishing the leaflets C, E, E1, in connection with other issues, we do not consider their contents. Leaflets N and O are admitted to have been published by respondent No. 2 and R, S and M by respondent No. 1, B by both of these respondents and F and H are proved to have been published by respondent No. 1 in connection with issue No. 4.

We have carefully gone into the contents of B, F, M, R and S and we are of view that there is no appeal to vote made in these leaflets on the basis of caste, religion or religious symbol. Though cow is an object of reverence to Hindus. She is not a symbol of Hindu religion. An appeal to save her could be on the grounds of her utility also.

Leaflet N (Ex. 31) is an appeal to voters to vote for respondent No. 2. The objected portions in this leaflet are—(a) Do not forget Chaturbhuj Chamhar who is born in the family of a devotee of Raidas.....Tell every body that we will elect only Chamhar brother (Subse Kahdo Ki Ham To Chamhar Bhai Ko Hi Member Chunenge).

(b) The Congress has foisted upon you a representative of Kori Caste who has not done any good to you and it again wants to have the same man of Kori Caste as your representative.

(c) I specially pray, Aharwar, Sakharwar Jatav brothers.....If you are born in Raidas Vansh.....have faith in your caste brother and vote for your caste brother who is standing on behalf of Hindu Maha Sabha (Hindu Maha Sabha Ki Taraf Se Khade Hone Wale Chamhar Bhai Ko Hi Vote Do). This member of Kori Jati has done no good.

From the above contents it is clear that respondent No. 2 has tried to emphasize that his opponent is a Kori, he himself is a Chamhar so those who are born in Raidas Vansh should vote for their Chamhar brother.

Leaflet 'O' Ex. 32 is also an appeal to vote for respondent No. 2 for Harijan Seat. The objected portions are—(i) why did not the Congress set up a candidate from our caste.

(ii) with a view to honour Raidas Vansh it is resolved in village Panchayats to elect caste brother Chaturbhuj Chamhar a Harijan candidate from Hindu Maha Sabha, (Biradari Bhai Chaturbhuj Chamhar Ko Hi Harijan Seat Ke Liye Member Chunenge) because the Congress has not set up any member of our caste. In this district there are 44,748 Chamhar brothers, whereas there are only 8,607 persons of Kori Caste. There are 12½ sub-sections in our Vansh, first Chamhar and then these sections.

(iii) why vote for Chaturbhuj? Because he belongs to our Raidas Vansh.

The above statement leaves no doubt that respondent No. 2 was appealing to Chamhar to vote for him, because he was his caste brother and his opponent respondent No. 7 was a Kori.

The learned counsel for respondents has tried to argue that the appeal made by respondent No. 2 in Ex. 31 and 32 is not on the basis of caste but is made on the basis of professional brotherhood. We are unable to agree with the view. The words in the appeal made in Ex. 31 and 32 are quite clear. Respondent No. 2 has called himself Chaturbhuj Jatav in his written statement and has signed the written statement in the same name, but in Ex. 31 and 32 in every place he has called himself Chatur Bhuj Chamhar and has asked the voters to vote for this Chamhar brother. In Ex. 32 sufficient emphasis is laid on the fact that Congress candidate was a Kori and that the population of Chamhars was more than five times that of Kories.

After carefully considering the contents of Ex. 31 and 32 we are definitely of opinion that respondent No. 2 has made a systematic appeal to Chamhar voters to vote for him on the basis of his caste and has thus committed a minor corrupt practice as specified in sub-section (5) of section 124 of the Representation of the People Act.

In leaflet H (Ex. 38) there is some reference to vote for Chamhar Bhai but we do not think this leaflet of sufficient importance so far as this issue is concerned.

There is on record some oral evidence regarding appeal made for Hindu Sabha candidates orally on the basis of religion or caste, but we do not find it convincing.

Our conclusion is that respondent No. 2 is responsible for making a systematic appeal on the basis of caste by means of leaflets N and O, and to this extent we decide issue No. 9 in favour of the petitioner.

Issue No. 12.—The allegations regarding the election expenses are contained in para. 9(ii) of the petition. Regarding sub-clauses (b) to (f) there is no evidence on record. In sub-clause (a) the allegations are that the amount spent on 3 posters and 10 leaflets has not been shown in the return of election expenses. On going through the file of the return of election expenses of respondent No. 1, we find

that the expenses of the three posters mentioned in para. 9(iii)(a) are included, in the return on page 1. In part E i.e., on page 6 an amount of Rs. 67/11/3 has been shown as payment to different presses for printing charges. The petitioner has not been able to point out to us that charges of the leaflets complained of are not included in this amount. In our view the allegations regarding the falsity of return of election expenses are not established and we decide this issue against the petitioner.

Issue No. 14.—Assuming the objection of the petitioner to be true the difference of votes would only be 39, which is not likely to affect the result of the election, hence we decide this issue against the petitioner.

Issue No. 15.—As there is no material on record regarding the non-compliances and their effect we decide this issue against the petitioner.

Issue No. 16.—Jamuna Prasad Mukharaiya respondent No. 1 has been found to have committed a major corrupt practice as specified in sub-section (5) of section 123 of the Representation of the People Act (*vide* issue No. 4) and Chaturbhuj Jatav respondent No. 2 has been found to have committed a minor corrupt practice as specified in sub-section (5) of section 124 of the Representation of the People Act (*vide* issue No. 9), and both these respondents have committed illegal practice specified in sub-section (3) of section 125 of the Representation of the People Act. The election of respondent No. 1 is void under clause (b) of sub-section (2) of section 100 of the Representation of the People Act. In the case of respondent No. 2, we find that his election has been procured by corrupt practice and it has materially affected the result of the election also. There were three Harijan candidates, Chaturbhuj Jatav (respondent No. 2), Hira Khusla Chamhar (respondent No. 5) and Sunnual (respondent No. 7) and they polled 12,452; 601; 10,889 votes respectively. Respondent Nos. 2 and 5 both are Chamhars. The difference in their votes clearly indicates that Respondent No. 2 scored the votes of his community simply because he made an appeal on the basis of caste. It is significant to note here, that respondent No. 2 was a foreigner to Bhilsa Constituency. He has admitted in his statement that he went to Bhilsa for the first time in November, 1951 i.e., just when he was chosen to stand as a candidate; whereas respondent No. 7 is resident of Bhilsa and has been working for Harijans for last 20 years. Taking into consideration all these things we are of opinion that the corrupt practice committed by respondent No. 2 has materially affected the result of the election and hence his election is void under clause (a) of sub-section (2) of section 100 of the Representation of the People Act.

The petitioner has claimed a declaration that respondent Nos. 6 and 7 are duly elected.

The difference between the votes of respondent Nos. 1 and 6 is 919 and that of 2 and 7 is 1,563. Considering the scandalous nature of false statement regarding respondent No. 6 and the mode of systematic appeal on the basis of caste made by respondent No. 2 we have no doubt in our minds that both these respondents Nos. 1 and 2, have got more votes simply because of their corrupt practices and if these corrupt practices had not been there respondents Nos. 6 and 7, undoubtedly would have obtained a majority of valid votes. Hence we declare the election of respondent Nos. 1 and 2, Dr. Jamunaprasad Mukharaiya and Chaturbhuj Jatav void and declare respondent Nos. 6 and 7, Shri Ram Sahai and Sunnual to have been duly elected. Issue No. 16 is decided accordingly.

ORDER

In the result, we declare the election of respondent No. 1 Dr. Jamuna Prasad Mukharaiya and No. 2 Chaturbhuj Jatav void and further declare respondent No. 6 Shri Ram Sahai and No. 7 Sunnual to have been duly elected.

As required by section 99 of the Representation of the People Act we record our finding—

That Dr. Jamuna Prasad Mukharaiya respondent No. 1 has himself committed the major corrupt practice, by publishing false statements, as specified under sub-section 5 of section 123 of the Representation of the People Act.

That Chaturbhuj Jatav respondent No. 2 has committed a minor corrupt practice by systematically appealing to the voters to vote on the basis of caste, as specified in sub-section (5) of section 124 of the Representation of the People Act.

That both respondents Dr. Jamuna Prasad Mukharaiya and Chaturbhuj Jatav have committed an illegal practice as specified in sub-section (3) of section 125 of the Representation of the People Act.

Looking to the facts of the case and the nature of evidence produced by the petitioner we fix Rs. 1000 as the cost of the petition, including Rs. 300 as pleader's fees. Respondent Nos 1 and 2 shall pay Rs 500 each to the petitioner as costs.

Particulars of costs of the Petitioner

	Rs.	As.	Ps.
(1) Stamp for Vakalatnamas	1	14	0
(2) Process Fees	50	0	0
(3) Miscellaneous Applications	1	0	0
(4) Diet money to witnesses (incurred Rs. 1198/15 9)	647	2	0
	(awarded)		
(5) Pleader's Fee.	300	0	0
TOTAL	1000	0	0

Dated Gwalior the 24th December 1953.

Pronounced in open Court

(Sd.) V. K. DONGRE, *Chairman,*
Election Tribunal, Gwalior.

(Sd.) SURAJ BHAN, *Member,*
Election Tribunal, Gwalior.

(Sd.) BHAGWAN SWAROOP, *Member,*
Election Tribunal, Gwalior.

ANNEXURE 'A'

(Order dated the 19th December, 1952)

We have heard Mr. A. B. Mishra for respondent No. 1 and Mr. Shiv Dayal for the petitioner regarding issues Nos 1, 10 and 11.

Issue No. 1—This issue relates to three lists Nos. 1, 2 and 3 attached to the petition. The headings of the lists are—

List No 1—List of Government Servants (Patels) as per annexures 'J', 'I', 'R', 'L', 'C', 'K'.

List No. 2—Datewise list of Bhilsa Constituency of Polling Stations.

List No. 3—List of Non-compliances.

All these three lists are not verified. The lists of particulars accompanying the petition are called annexures by the petitioner and they are all from 'A' to 'T' verified by one verification at the foot of annexures 'R', 'S' and 'T'. Mr. A. B. Mishra for respondent No. 1 has contended that sub-section (2) of section 83 of R. P. Act provides for the verification of lists of particulars and not of annexures. The petitioner has not verified these three lists hence these lists could not be considered as part of the petition. As Mr. Mishra's contention is based on the use of words annexure and lists, it is necessary to make it clear that all annexure from A to T are really lists of particulars and the petitioner has used the word annexure at the head of the lists for numbering and reference only. In each annexure, right in the beginning the petitioner has written 'List of Particulars' and the contents leave no doubt that all annexures are lists of particulars.

Mr. Shiv Dayal for the petitioner has said before us that under sub-section (2) of section 83 of the R. P. Act, only lists of particulars need to be verified and nothing else. Particulars of corrupt and illegal practices are annexures which are duly verified and these three lists are only supplements of these annexures. Particulars are given in para. 8(4) of the petition and list No. 1 is part of para. No. 8. Similarly list No 3 is mentioned in para. No. 11 of the petition and list No. 2 in note No 1 of annexures R, S, T which are verified. Thus in short Mr. Shiv Dayal's contention is that as these lists are either mentioned in petition or they are supplements of annexures they do not need verification under section 83(2) of R. P. Act separately.

Sub-section 1 of section 83 of the R. P. Act requires the petition to be verified in the manner laid down in the Civil Procedure Code. Sub-section (2) requires the petition to be accompanied by lists, verified in like manner, setting forth full particulars of any corrupt or illegal practice. This clearly means that the verification of the petition does not dispense with the necessity of verifying lists simply because the matter that should have been in the list under section 83(2) has been referred to in the petition. Hence our considered opinion is that the reference of these lists or their contents in the petition or annexure cannot help the petitioner.

In paragraph No. 8(4) of the petition it is alleged that respondent Nos 1 and 2 obtained and secured assistance of a number of Government Servants for the purpose of the furtherance of the election prospects of respondents Nos. 1 and 2, through the publication of four leaflets and one circular letter signed over by Patels (Village headmen) as per annexures 'I', 'J', 'C', 'K', 'R'. Part second of the paragraph says that the names of such servants (Patels) and the particulars of assistance taken from them and other details are set out in the list of particulars marked No. 1, enclosed herewith as a part of this petition.

Thus in the words of the petitioner himself list No. 1 is a list of particulars and Mr. Shiv Dayal's argument to this effect that list No. 1 is not list of particulars, is not supported by the contents of the petition itself.

In para. 8(4) the petitioner has alleged a major corrupt practice and so under sub-section (2) of section 83 of R. P. Act, he is required to give a list signed and verified setting forth full particulars. On perusing list No. 1, we find it only contains names of 40 persons who are said to be Government Servants. In this there is no reference to annexures 'I', 'J', 'C', 'K', 'L', 'R'. On going through these annexures we find that even in them there are no particular regarding the part played by persons named in list No. 1. Hence it cannot be said that list No. 1 is only a list of persons whose names and acts have come in annexures referred to.

As the petitioner has himself called list No. 1 as list of particulars, in para. No. 8(4) of the petition and from record it does not appear to be a supplementary list of persons mentioned in some other list of particular regarding these persons, we treat this list as list of particulars in connection with para. No. 8(4) of the petition. As this list is not verified according to sub-section 2 of section 83 of R. P. Act and we are reluctant to take it as verified by implication, we are of opinion that this list No. 1 cannot be considered for the purposes of this petition.

Sub-section 2 of section 83 of R. P. Act requires lists of full particulars only of corrupt and illegal practices. List No. 2 is a datewise list of polling stations and list No. 3 is a list of non-compliances. Both these lists do not relate to corrupt or illegal practices, hence in our view, they are not required to be verified and so they cannot be ignored for want of verification.

Thus we decide issue No. 1 with respect to list No. 1 in favour of the respondent and with respect to list Nos. 2 and 3 against him.

Issue No. 10.—In para. No. 8(1) of the petition it is alleged that certain leaflets were published to assure the electors that respondent No. 3 was not a genuine candidate of Ram Rajya Parishad and was contesting the election only for the benefit of the Congress Candidates in collusion with respondent No. 6.

In para. No. 8(2) it is said that these leaflets were published, printed, read out, and explained in Bhilsa Constituency by respondent Nos. 1 and 2, their agents and other persons with the connivance of respondent Nos. 1 and 2 etc.

The contention of Mr. A. B. Mishra is that the allegations are vague, the petitioner has not alleged that the leaflets reached the public or they were distributed to the electors etc. According to sub-section 1 of section 83 of R. P. Act the petition should contain a concise statement of material facts on which the petitioner relies. Full particulars in case of corrupt or illegal practices are to be set forth in lists of particulars. Mr. Mishra's objection relates to the insufficiency or vagueness of para. No. 8 of the petition and he has drawn our attention to cases cited in D.E.C. Volume II on page 290 (Ambala North Sikh Rural Constituency S. Sampurna Singh *versus* Hon. S. Baldeosingh) and page 332 (North West Gurgaon Mohammedan Constituency Yasin Khan *versus* M. Ahmad Jan and others) in his support. These cases do not support his contention as they relate to particulars set forth in the lists and not to matters written in the petition, and thus they are not relevant to the points in question.

We have carefully gone through paragraph 8 of the petition and we find that the requirements of sub-section (1) of section 83 of R. P. Act are fulfilled and there is no vagueness or incompleteness as contended. Hence issue No. 10 is decided against the respondent.

Issue No. 11.—Mr Mishra's argument regarding this issue is practically the same as that for issue No. 10. He has said it is not mentioned where leaflets were distributed. Para No. 9 of the petition says that the systematic appeal has been made through the publication of certain leaflets and posters. The particulars are given in the lists attached to leaflets mentioned under para. No. 9. According to sub-section 1 of section 83 of the R. P. Act, full particulars are not necessary in the petition. We don't find any force in the objection raised by the respondent, hence we decide issue No. 11 against the respondent. Dated the 19th December, 1952.

(Sd.) V. K. DONGRE, *Chairman*,
Election Tribunal, Gwalior.

(Sd.) SURAJ BHAN, *Member*,
Election Tribunal, Gwalior.

(Sd.) BHAGWAN SWAROOP, *Member*,
Election Tribunal, Gwalior.

ANNEXURE 'B'

(Order dated the 24th December, 1952).

We have heard the counsels of both the sides with regard to issue No. 13. The point for consideration is whether the recriminatory notice by respondent No. 1 presented at Gwalior on 4th September 1952 to one member of the Tribunal, is presented to the proper person within the time prescribed for it. On 4th September 1952 the respondent No. 1 Mr. Jamuna Prasad Mukharaiya presented the recriminatory notice to Shri Suraj Bhan, who is a member of the Election Tribunal, and he sent it under registered cover to the Chairman who received it on 11th September 1952. The Election Petition was published in Madhya Bharat Gazette dated the 21st August, 1952. According to section 97 of the R. P. Act, notice of recrimination should be given to the Tribunal within 14 days from the publication of the election petition under section 90. Section 86(5) of the R. P. Act provides that the reference to the Tribunal as respects any matter to be done before the commencement of the trial be deemed to be reference to the Chairman of the Tribunal. According to this provision, the respondent No. 1 should have presented the recriminatory notice to the Chairman, as the trial of the petition had not started before the Tribunal.

Mr. Anand Bihari Mishra for the respondent, has produced a notice regarding the date of the hearing served on respondent No. 1 and has tried to argue that it gave an impression to his client that every thing regarding the petition is to be done in the Court of the District Judge, Gwalior. We have carefully gone through the words of the notice. It only says that the date of hearing is 13th October, 1952 and until other arrangement is made, the hearing will take place in the court of the District Judge, Gwalior. The respondent should give his written statement on or before this date. The notice does not give any indication that the respondent should give recriminatory notice at Gwalior. As the provision under section 86(5) is quite clear the respondent cannot derive any advantage by his ignorance of provisions of law or wrong impressions. Mr. Mishra has cited A.I.R. 1931 Allahabad 507, but it has no bearing on the case. Hence we find that the recriminatory notice is not presented in time to the proper authority, with the result that the issue No. 13 is decided in favour of the petitioner and against respondent No. 1. Dated the 24th December, 1952.

(Sd.) V. K. DONGRE, *Chairman*,
Election Tribunal, Gwalior.

(Sd.) SURAJ BHAN, *Member*,
Election Tribunal, Gwalior.

(Sd.) BHAGWAN SWAROOP, *Member*,
Election Tribunal, Gwalior.

ANNEXURE 'C'

(Order dated the 29th January, 1953).

The petitioner has given an application on 24th December 1952 under section 83(3) of the R. P. Act for amendment of particulars in annexures I, J, C, K, R filed by him with the petition. The contents of the application are that certain Government Servants whose names were given in list No. 1, which has been rejected for want of verification (by order dated 19th December 1952) and whose names are now given in the application, got pamphlet appended to annexures I, J, C, K, R printed, published and circulated in their names with the connivance of respondent Nos. 1 and 2, and their agents and they allowed the same pamphlets to be published in their names and also they orally published and propagated the contents of the pamphlets, in their own villages and adjoining villages after the printing, upto the time of poll.

We have heard counsels on both the sides regarding this application. From the contents of the application it is clear that the petitioner, in fact, now wants to add to the lists (I, J, C, K, R) particulars of a major corrupt practice mentioned in para. 8 of section 123 of the R. P. Act viz., obtaining or procuring by a candidate or his agents or with their connivance any assistance for the furtherance of the prospects of the candidate's election from any person serving under Government of India or the Government of any State. Though a reference to this corrupt practice has been made by the petitioner in para. 8(4) of the petition, no particulars of this corrupt practice are given in any of the lists I, J, C, K, R as required by sub-section (2) of section 83 of the R. P. Act. In para 8(4) of the petition, it is said that details are set out in list of particulars, marked No. 1. This list does not contain any details of corrupt practice alleged in para. 8(4) of the petition, it only gives names of certain patels. Besides, this list has been rejected by our order dated the 19th December, 1952.

The point for consideration is whether the petitioner can be allowed to amend lists of particulars so as to introduce a new corrupt practice not mentioned in lists accompanying the petition under section 83(2) of the R. P. Act. Sub-section (2) of section 83 of the R. P. Act is as follows:—

The petition shall be accompanied by a list signed and verified in like manner, setting forth full particulars of any corrupt or illegal practice, which the petitioner alleges including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of commission of each such practice.

Reading sub-sections 1 and 2 of section 83 of the R. P. Act together, it is quite clear that besides giving material facts in the petition, it is incumbent on the petitioner to set forth full particulars of each corrupt practice, in the list accompanying the petition and a reference in the petition to some corrupt practice cannot dispense with the list of full particulars, with regard to that practice.

Sub-section 3 of section 83 of the R. P. Act restricts the scope of amendment only to the extent of particulars included in the list.

This sub-section does not say that lists of particulars may be amended but says in very precise terms that the particulars included in the list may be amended. Looking to the plain wordings of the section, it appears that the power or discretion given under sub-section (3) of section 83 of the R. P. Act, to allow an amendment of particulars, should not be exercised where no particulars at all, regarding a certain corrupt practice have been given along with the petition under sub-section (2). If the plea of the petitioner that the corrupt practice about which the particulars are now sought to be amended, as mentioned in para. 8(4) of the petition is allowed, there would be no object, in prescribing under section 83(2) of the R.P. Act, a list setting forth full particulars.

The learned counsel for the petitioner has drawn our attention to cases cited in Doabia's Election Cases, Volume I (1864-1935) page 108 and Volume I (1935-1950) page 1, and a recent judgment of the Hon'ble the High Court of Judicature at Bombay in Special Civil Appeal No. 2017 of 1952. We have gone through these cases carefully and our opinion is that these cases are not helpful to the petitioner in view of the clear wordings of sub-sections 2 and 3 of section 83 of the R. P. Act. As against the cases quoted by the petitioner in Kistna, First Case quoted in Doabia's Election Cases Volume I (1864-1935) page 467, it has been held that the rule says that particulars can be amended, it does not mean that the list of particulars can be amended. Adding to the particulars included in the list is not

amending them, because these original particulars are left just as they stood, quite unamended, and new ones are added. This will constitute amendment of the list and not of the particulars. Section 83(3) only permits particulars included in the list to be amended and not the list.

Considering the contents of the petitioner's application, the wordings of section 83(2), (3) of the R. P. Act and the cases brought to our notice, we are of opinion that the amendment sought by the petitioner should not be allowed and hence we reject the petitioner's application dated the 24th December, 1952.

(Sd.) V. K. DONGRE, *Chairman,*
Election Tribunal, Gwalior.

(Sd.) SURAJ BHAN, *Member,*
Election Tribunal, Gwalior.

(Sd.) BHAGWAN SWAROOP, *Member,*
Election Tribunal, Gwalior.

Dated the 29th January, 1953.

[No. 19/263/52-Elec.III/9518.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*

